

REGISTRATION NO. 7559 Filed & Recorded

JUL 3 1974 -2 35 PM

INTERSTATE COMMERCE COMMISSION

**RECONSTRUCTION AND CONDITIONAL SALE
AGREEMENT**

Dated as of June 15, 1974

among

**AMERICAN NATIONAL BANK AND TRUST COMPANY
OF CHICAGO,**

as Agent,

AMERICAN FLETCHER LEASING CORPORATION,

and

BURLINGTON NORTHERN INC.

INDEX

<u>ARTICLE</u>	Reconstruction and Conditional Sale Agreement	<u>PAGE</u>
1.	Construction and Sale.....	2
2.	Inspection and Delivery.....	2
3.	Purchase Price and Payment.....	4
4.	Title to the Equipment.....	14
5.	Taxes	15
6.	Maintenance and Repair; Casualty Occurrences; Insurance.....	15
7.	Obligations of Railroad, as Guarantor	17
8.	Reports and Inspections	18
9.	Marking of Equipment	18
10.	Compliance with Laws and Rules.....	18
11.	Possession and Use	18
12.	Prohibition Against Liens.....	19
13.	Indemnities and Warranties	19
14.	Assignments	21
15.	Defaults	22
16.	Remedies.....	25
17.	Applicable State Laws	29
18.	Recording.....	29
19.	Payment of Expenses	29
20.	Article Headings; Effect and Modification of Agreement	30
21.	Notice	30
22.	Immunities; Satisfaction of Undertakings	30
23.	Law Governing	31
24.	Execution.....	31

RECONSTRUCTION AND CONDITIONAL SALE AGREEMENT

dated as of June 15, 1974, among AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO (hereinafter called the Vendor), as Agent under a Finance Agreement dated as of June 15, 1974 (hereinafter called the Finance Agreement), AMERICAN FLETCHER LEASING CORPORATION, an Illinois corporation (hereinafter called the Company) and BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Railroad).

WHEREAS the Company has acquired or will acquire, all right, title and interest in certain railroad equipment (hereinafter called the Hulks) from the Railroad pursuant to a Hulk Purchase Agreement (hereinafter called the Hulk Purchase Agreement) dated as of June 15, 1974, and has subjected the same to a security interest in favor of the Vendor for the purpose of causing the Hulks to be reconstructed; and

WHEREAS the Vendor has acquired security title to the Hulks pursuant to a Transfer Agreement dated as of June 15, 1974, between the Vendor and the Company for the purpose of causing the same to be reconstructed as described herein and thereupon selling its interest in the same to the Company and the Company has agreed to purchase such interest in the Hulks as so reconstructed (the reconstructed equipment described in Schedule A hereto being hereinafter called the Equipment); and

WHEREAS the Hulks have been or will be delivered to the Railroad and the Railroad has agreed with the Vendor and the Company to cause the Hulks to be rebuilt as required hereby to enable delivery of the Equipment to be made to the Company in accordance herewith; and

WHEREAS the Company and the Railroad are entering into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), leasing the Equipment to the Railroad, subject to this Agreement, which Lease will be filed with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and will be deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada, concurrently with the filing of this Agreement thereunder; and

WHEREAS the Railroad, in order to obtain the use of the Equipment and to induce the Vendor to enter into this Agreement, is willing to guarantee to the Vendor the due and punctual payment of certain sums payable by, and

the due and punctual performance of all other obligations of, the Company under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Railroad will cause the Hulks to be reconstructed into the Equipment as described in Schedule A hereto and will deliver the Equipment to the Company on behalf of the Vendor and the Company will accept delivery of and pay for the Equipment as hereinafter provided, each unit of which shall be standard gauge railroad equipment reconstructed in accordance with the Company's specifications referred to in Schedule A hereto and in accordance with such modifications thereof as may be agreed upon in writing by the Company, the Vendor and the Railroad (which specifications and modifications, if any, are by reference made a part of this Agreement as fully as though expressly set forth herein and are hereinafter called the Specifications). The Railroad warrants to the Vendor and the Company that the design, quality and component parts of the Equipment will conform to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads, reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of the completion of the reconstruction of such Equipment.

ARTICLE 2. *Inspection and Delivery.* The Railroad will, on or before December 27, 1974 (unless such date is extended by the Company and the Vendor by appropriate written agreement), deliver the units of the Equipment, on behalf of the Vendor, to the Company at such point or points within the United States of America as shall be specified by the Railroad. The Railroad's obligations pursuant to the preceding sentence shall be absolute and unconditional, regardless of any events which might otherwise be deemed to constitute *force majeure* including, but not limited to, the destruction of any Hulks or units of Equipment. In the event any units of Equipment are not delivered and accepted by said date or are not settled for

by January 3, 1975, (i) the Vendor shall have no obligation to the Company as to such units not so accepted and delivered or not so settled for, nor shall it be liable to the Company for any claims or damages by reason of such nondelivery, and (ii) notwithstanding any provisions in the Hulk Purchase Agreement, the Railroad shall deliver to the Company the Hulks which have not been reconstructed into such units and shall be liable to the Company for damages for breach of its obligations hereunder which shall include all damages and expenses, including attorneys' fees, which the Company shall have sustained by reason of such breach of obligations; *provided, however*, that the Railroad may at its option purchase such Hulks for their respective Hulk Purchase Prices (as hereinafter defined) in lieu of such delivery and liabilities for damages. If pursuant to the immediately preceding sentence the Railroad has the option to purchase such Hulks and such Hulk Purchase Prices equal or exceed \$500,000, then the Railroad shall, upon 30-days' written notice from the Company, on the June 1 or December 1 next succeeding the receipt by the Railroad of such notice, purchase the interest of the Company hereunder and will pay to the Company an amount equal to the amounts, if any, paid by the Company pursuant to subparagraph (a) of the third paragraph of Article 3, hereof (the "Company's Investment") plus interest at the rate of 14%, commencing with the date or dates of the Company's Investment and ending on the day preceding such purchase, plus all fees and out of pocket expenses paid or incurred by the Company in respect of this transaction. The Railroad shall thereupon enter into an appropriate amendment, hereto, in form satisfactory to the Vendor, pursuant to which the Railroad will directly assume all obligations of the Company hereunder without reference to the limitations of liability contained in the last paragraph of Article 3, hereof, or any other circumstance which might otherwise limit the recourse of the Vendor to the Company.

Any units of Equipment not delivered and accepted by the aforesaid date or not settled for by January 3, 1975, shall be excluded from the succeeding Articles of this Agreement, and the parties to this Agreement shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded. The Vendor and the Company shall not pay for any Equipment so excluded (except that the Company shall be obligated to pay to the Railroad the Hulk Purchase Price to the extent provided in the Hulk Purchase Agreement), and the Vendor shall assign to the Company all its right, title and interest in the units so excluded.

During reconstruction, the Equipment shall be subject to inspection and approval by the inspectors authorized by the Company, and the Railroad shall grant to such authorized inspectors reasonable access to its plant or plants. The Railroad agrees to inspect all materials used in the reconstruction of the Equipment in accordance with the standard quality control practices of the Railroad. Immediately upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector authorized by the Company for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector authorized by the Company shall execute and deliver to the Railroad a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company on the date of such Certificate of Acceptance and are marked in accordance with Article 9 hereof; *provided, however*, that the Railroad shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof.

ARTICLE 3. *Purchase Price and Payment.* The cost of the Hulks (the "Hulk Purchase Price") and the base reconstruction cost per unit of the Equipment are set forth in Schedule A hereto. The term "Reconstruction Cost" per unit as used herein means the base reconstruction cost per unit set forth in Schedule A, as it may be increased or decreased by agreement between the Railroad, the Vendor and the Company, but the aggregate Reconstruction Cost shall in no event exceed the lesser of (i) the actual cost to the Railroad of doing the reconstruction work plus a reasonable overhead and profit factor, or (ii) \$3,731,100 in the aggregate unless the Company and the Vendor agree to a higher figure. The term "Purchase Price" as used herein means the sum of the Hulk Purchase Price and the aggregate Reconstruction Cost.

For the purpose of settlement therefor, the Equipment shall be divided into two groups of units of the Equipment (each such group being hereinafter called a Group) unless the Company, the Vendor and the Railroad shall otherwise agree. Unless the Company, the Vendor and the Railroad shall otherwise agree, the term "Closing Date" with respect to the first and second Groups, respectively, shall mean November 1, 1974 and January 3, 1975. The term "business days" as used herein means calendar

days, excluding Saturdays, Sundays, holidays and any other day on which banking institutions in Chicago, Illinois or New York, New York, are authorized to remain closed.

The Company hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment as follows:

(a) On the Closing Date with respect to each Group an amount equal to 30% of the aggregate Purchase Price of such Group;

(b) In 30 semiannual instalments, as hereinafter provided, an amount (hereinafter called the Conditional Sale Indebtedness) equal to the aggregate of the Purchase Price of the units of the Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The instalments of the Conditional Sale Indebtedness shall be payable on each June 1 and December 1, commencing December 1, 1975, to and including June 1, 1990 (or, if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred. The Commitment Fee (as hereinafter defined) shall be payable on the Commitment Fee Payment Date (as hereinafter defined). Interest shall be payable on December 1, 1974, the Takeout Date (as hereinafter defined) and each Payment Date thereafter as follows:

(i) On December 1, 1974, for each day elapsed from the Closing Date or Closing Dates on which the Conditional Sale Indebtedness was incurred, to and including December 1, 1974, at a rate or rates computed as follows: (a) the rate or rates per annum computed on a daily basis on each day equal to the higher of either (x) 118% of the prime rate applicable to large credit-worthy borrowers (computed on the basis of a 360-day year on the actual number of days elapsed) charged by The Chase Manhattan Bank, N.A., in New York on the Closing Date and as such prime rate is adjusted thereafter, or (y) the rate equal to 112% of the average of the rates for 90- to 119-day prime

commercial paper placed through dealers as quoted weekly by the Federal Reserve Bank of New York for each week during such period (the higher of such rates being hereinafter called the Interim Rate) (b) divided by 360, and

(ii) On June 2, 1975 (such date being herein called the Takeout Date), (a) with respect to each unit of the Equipment settled for prior to December 1, 1974, for each day elapsed from December 1, 1974, to and including the Takeout Date, at a rate equal to the Interim Rate divided by 360 and (b) with respect to each unit of the Equipment settled for on or after December 1, 1974, for each day, if any, elapsed from the Closing Date with respect to such unit to and including the Takeout Date, at a rate equal to the Interim Rate divided by 360, and

(iii) On the earlier of (a) the final Closing Date for any units of the Equipment or (b) January 3, 1975 (the earlier of such dates being hereinafter referred to as the Commitment Fee Payment Date), for each day elapsed from June 11, 1974, to and including the Commitment Fee Payment Date, at a rate equal to $\frac{1}{2}$ of 1% divided by 360 applied to (x) \$3,754,086 for the period up to and including the first Closing Date for any units of the Equipment hereunder and (y) the portion, if any, of said \$3,754,086 which is not applied to the Purchase Price of the Equipment on said first Closing Date, for the period from said first Closing Date up to and including any second (and final) Closing Date or January 3, 1975, as the case may be (the aggregate amount as so computed being hereinafter called the Commitment Fee), the Commitment Fee to be payable on the Commitment Fee Payment Date whether or not any Closing Dates have occurred prior to or on the Commitment Fee Payment Date, and

(iv) On December 1, 1975, to the extent accrued, from the Takeout Date at a rate per annum equal to the Long Term Debt Rate, (calculated as provided in §2 of the Lease), and

(v) On each Payment Date after December 1, 1975, for each preceding semiannual period, at a rate per annum equal to the Long Term Debt Rate.

Upon determination of the Long Term Debt Rate, this Agreement shall be appropriately supplemented to set forth the Long Term Debt Rate.

The principal amount of Conditional Sale Indebtedness payable on each of the Payment Dates shall be calculated so that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such instalments of principal shall completely amortize the Conditional Sale Indebtedness. The Company will furnish to the Vendor and the Railroad promptly after the Long Term Debt Rate is determined a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Notwithstanding the foregoing, in the event that on or before June 2, 1975, the conditions set forth in Section 17 of the Lease have not been met, then the entire unpaid balance of the Conditional Sale Indebtedness, plus interest thereon as aforesaid, shall become due and payable on June 2, 1975.

Interest under this Agreement shall be determined, except to the extent otherwise specifically provided, on the basis of a 360-day year of twelve 30-day months.

The Company will pay interest, to the extent that it shall be legally enforceable, at the rate of 1% per annum over the Interim Rate or the Long Term Debt Rate, whichever is applicable at the given point in time, upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 6 hereof, the Company shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate that the Company will furnish to the Vendor that portion of the Purchase Price for the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that such portion plus an amount equal to the balance of such Purchase Price shall be paid by the Vendor to the Railroad.

The Vendor shall be under no obligation to make payment to the Railroad unless there shall have theretofore been delivered to the Vendor

the following documents, in form and substance satisfactory to it and its special counsel hereinafter mentioned:

(a) The Certificate or Certificates of Acceptance and the Certificate or Certificates of Delivery contemplated by §1 of the Lease with respect to the Equipment in the Group;

(b) Invoice or Invoices of the Railroad for the reconstruction of the Equipment in the Group for the Hulks so reconstructed accompanied by or having endorsed thereon a certification by the Company as to its acceptance of the price stated therein and a certification by the Railroad that the total price does not exceed the price that would be charged by an independent car builder for comparable equipment;

(c) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Vendor and the Interim Investor referred to in the Finance Agreement, dated as of such Closing Date, addressed to the Vendor and the Interim Investor, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Railroad, the Company and the Vendor and is a valid instrument binding upon such parties, (ii) this Agreement has been duly authorized, executed and delivered and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) security title to the units of Equipment in such Group is validly vested in the Vendor, free of all claims, liens, security interests and other encumbrances except only the rights of the Company under this Agreement, and the rights of the Railroad under the Lease, (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement or this Agreement, or if any approval is necessary, it has been obtained, (v) this Agreement and the Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Vendor hereunder in any State of the United States of America or the District of Columbia and (vi) registration of this Agreement or any interests therein held by the Interim Investor under the Finance Agreement is not required under the Securities Act of 1933, as amended; and said opinion shall cover such other matters as shall be reasonably requested by the Vendor;

(d) A favorable opinion of counsel for the Company, dated as of such Closing Date, addressed to the Vendor and the Interim Investor, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Company and is a valid instrument binding upon the Company and (ii) this Agreement has been duly authorized, executed and delivered by the Company and is a legal, valid and binding instrument enforceable against the Company in accordance with its terms; and

(e) A favorable opinion of counsel for the Railroad, dated as of such Closing Date, addressed to the Vendor and the Interim Investor, to the effect set forth in §13 of the Lease.

In giving the opinions specified in this Article 3, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving its opinion pursuant to subparagraph (c) of the next preceding paragraph, counsel may rely on the opinion of counsel for the Railroad and the Company as to all matters of law of jurisdictions other than the United States or the State of New York involved in said opinion and upon the opinion of counsel for the Railroad as to the title to the Equipment.

The obligation of the Vendor hereunder to make payment for the Equipment is hereby expressly conditioned upon the prior receipt by the Vendor, as provided in the Finance Agreement, of all the funds to be furnished to the Vendor by the various parties to the Finance Agreement with respect to such Equipment. The Vendor shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in this Agreement could constitute an event of default, shall be subsisting under this Agreement. The Railroad shall not have any lien on or security interest in the Equipment.

Notwithstanding anything to the contrary herein expressed or implied, the parties hereto agree that the Vendor shall have no obligation with respect to the reconstruction of the Hulks and delivery of the Equipment

hereunder to the Company except to the extent that the Railroad has fully complied with the Railroad's obligations with respect to such reconstruction and delivery, it being understood that if the Railroad shall default in respect of such obligations the Vendor shall have no responsibility of any nature in connection with the Hulks and/or the Equipment which is the subject of said default, the recourse of the Company being available solely against the Railroad.

The Railroad hereby represents and warrants to the Vendor and the Company and their successors and assigns, that (i) the Finance Agreement, this Agreement, the Lease and the Hulk Purchase Agreement were duly authorized by it and were lawfully executed and delivered by it for a valid consideration and (assuming due authorization, execution and delivery by the other party or parties thereto) this Agreement, the Lease and the Hulk Purchase Agreement are, insofar as the Railroad is concerned, valid and existing agreements binding upon it in accordance with their respective terms as they are now in force; (ii) no approval is required from the Interstate Commerce Commission or any other governmental authority with respect to the entering into or performance by the Railroad of this Agreement, the Finance Agreement, the Lease or the Hulk Purchase Agreement; (iii) the Railroad is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware and has the power and authority to own its properties and to carry on its business as now conducted; (iv) there is no condition, restriction or requirement in the documents constituting the corporate charter of the Railroad relating to or affecting the execution and delivery by the Railroad of this Agreement, the Hulk Purchase Agreement, the Finance Agreement or the Lease or the enforceability hereof or thereof in accordance with their terms or requiring any approval of stockholders in respect hereof or thereof; (v) the entering into and performance of this Agreement, the Hulk Purchase Agreement, the Finance Agreement or the Lease will not conflict with, or result in any breach of, or constitute a default under, any terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign or any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Railroad is a party or by which it may be bound; (vi) no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any

property or interests therein of the Railroad, now attaches or hereafter will attach to the Hulks or to the Equipment or in any manner affects or will affect adversely the Vendor's or the Company's right, title and interest therein; *provided, however*, that such liens may attach to the leasehold rights of the Railroad under the Lease in and to the Equipment; (vii) at the time of delivery of the units of the Equipment by the Railroad under this Agreement, such units were free of all claims, liens, security interests and other encumbrances of the Railroad or of anyone claiming through the Railroad; (viii) prior to the delivery of the units of the Equipment by the Railroad under this Agreement, this Agreement and the Lease will have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and notice of such deposit will forthwith be given in *The Canada Gazette*.

It is agreed that the obligation of the Company to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 3 with respect to the Equipment is specifically subject to the fulfillment, on or before each Closing Date, of the following conditions (any of which may be waived by the Company):

(a) the Vendor shall concurrently pay or cause to be paid to the Railroad the amounts contemplated to be paid by it as provided in this Article 3 and the documents required by this Article 3 shall have been delivered;

(b) no event of default of the Railroad specified herein or Event of Default of the Railroad under the Lease, nor any event which with lapse of time and/or demand provided for herein or in the Lease could constitute such an event of default or Event of Default, shall have occurred and be continuing; and

(c) the Company shall have received (i) the opinion of counsel required by §13 of the Lease and (ii) such other documents as the Company may reasonably request.

Notwithstanding any other provision or implication of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), it is understood and agreed by the Vendor that the liability of the Company

for all payments to be made by it under and pursuant to this Agreement, or for any claim based on any provision of this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of Article 3 hereof and Article 19, hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Company only to the extent that the Company or any assignee of the Company shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Company shall have no personal liability to make any payments or discharge any claims due or arising under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Company or any assignee of the Company as above provided. In addition, the Vendor agrees and understands that the Company (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto) or of any of the Railroad's obligations thereunder, (ii) makes no representation or warranty as to the title to or the condition of the Hulks or the Equipment and (iii) shall have no obligation, duty or other liability whatsoever to see to or be responsible for the performance or observance by the Railroad of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Railroad and the Equipment and to the Vendor's rights under the Lease against the Railroad and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Company or any assignee of the Company (which term as used in this paragraph includes the Vendor to the extent payments under the Lease are made to the Vendor as contemplated therein) at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 6 hereof) paid for or with respect to the Equipment pursuant to the Lease, (b) any and all payments or proceeds received by the Company or any assignee of the Company under the Lease or for or with respect to the Equipment as the result of the

sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and (c) any and all other payments received by the Company or any assignee of the Company under §9 of the Lease and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a), (b) and (c) as are indefeasibly received by the Company or any assignee of the Company and as shall be required to discharge the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon, due and payable on, or within six days after, the date such amounts received by the Company or any assignee of the Company were required to be paid pursuant to the Lease or as shall be required to discharge any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a), (b) and (c) which were received by the Company or any assignee of the Company prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within six days after, the date corresponding to the date on which amounts with respect thereto received by the Company or any assignee of the Company were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Company shall derogate from the right of the Vendor to proceed against the Equipment or the Railroad, as guarantor, as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon. Notwithstanding anything to the contrary contained in Article 15 or Article 16 hereof or any other provision of this Agreement, the Vendor agrees that (A) in the event it shall obtain a judgment against the Company for an amount in excess of the amounts payable by the Company pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to such amount except as provided in the immediately preceding sentence and (B) it shall not bring suit against the Company for any sums in addition to the amounts payable by the Company pursuant to said limitations (or obtain a judgment, order or decree against the Company for any relief other than the payment of money) except as may be required by

applicable rules of procedure to enforce, by appropriate proceedings against the Company at law or in equity or otherwise, the obligation to make the payments to be made pursuant to subparagraphs (a) and (b) of the third paragraph of this Article 3 or any other payments or performance obligations due to the Vendor under this Agreement against the Equipment, the Railroad (as guarantor) and the Lease (rather than against the Company personally).

ARTICLE 4. *Title to the Equipment.* The Vendor shall and hereby does retain the full security title to the Hulks delivered to the Railroad hereunder for reconstruction and shall continue to retain such title during the entire period that the Hulks are being reconstructed and thereafter in the Equipment, until the Company shall have made all its payments under this Agreement in respect of the Equipment and shall have kept and performed all its agreements herein contained in respect thereof, notwithstanding any provision of this Agreement limiting the liability of the Company and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Company and the Railroad as provided in this Agreement. Any and all additions to the Hulks and the Equipment, and any and all parts installed on and the additions and replacements made to any Hulk or to any unit of the Equipment shall constitute accessions thereto and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 6 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Company's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company without further transfer or action on the part of the Vendor. However, the Vendor will (a) execute a bill or bills of sale for the Equipment, transferring its security title thereto to the Company, or upon its order, free of all liens, security interests and other encumbrances created by it or created or retained hereby and deliver such bill or bills of sale to the Company at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in

order then to make clear upon the public records the title of the Company to such Equipment and (c) pay to the Company any money paid to the Vendor pursuant to Article 6 hereof in respect of such Equipment and not theretofore applied as therein provided.

ARTICLE 5. *Taxes.* The Railroad's obligations set forth in §5 of the Lease are hereby incorporated by reference as if fully set forth herein and the Railroad agrees that such obligations shall be enforceable against the Railroad by the Vendor whether or not the Lease is in effect.

ARTICLE 6. *Maintenance and Repair; Casualty Occurrences; Insurance.* The Railroad's obligations set forth in the third paragraph of §8 of the Lease are hereby incorporated by reference as if fully set forth herein and the Railroad agrees that such obligations shall be enforceable against the Railroad by the Vendor whether or not the Lease is in effect.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or, in the reasonable opinion of the Railroad or of a qualified representative of the Company or the Vendor, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (each such occurrence being hereinafter called a Casualty Occurrence), the Company shall, within 14 days after it shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Company may receive notice thereof under the Lease), cause the Vendor to be fully informed in regard thereto. On the next succeeding interest payment date in respect of the Conditional Sale Indebtedness for the Group in which such unit was included, the Company shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 6) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit.

Upon payment by the Company to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit or units shall pass to and vest in the Company, without further transfer or action on the part of the Vendor. The Railroad, at its own expense, will prepare for the Vendor, to execute and deliver to the Company, an appropriate instrument, satisfactory in form and substance to the Vendor and the Company, confirming such passage to the Company of all the Vendor's right, title and interest in such

unit, in recordable form, in order that the Company may make clear upon the public records the title of the Company to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 6), plus interest accrued thereon but unpaid as of the date of payment of such Casualty Value. For the purpose of this paragraph, each payment of the Purchase Price made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on similar equipment used by it. Such insurance shall be payable to the Vendor, the Company and the Railroad as their interests may appear to the extent that the Railroad is permitted to do so under such policies of insurance.

It is further understood and agreed that any insurance proceeds or net condemnation proceeds received by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Company to the Vendor in respect of Casualty Occurrences pursuant to the second paragraph of this Article 6. If the Vendor shall receive any insurance proceeds or net condemnation proceeds in respect of such units suffering a Casualty Occurrence after the Company shall have made payments pursuant to this Article 6 without deduction for such insurance or net condemnation proceeds, the Vendor shall pay insurance or net condemnation proceeds to the Company. All proceeds of insurance received by the Vendor in respect of insurance carried on any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Company upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 7. *Obligations of Railroad, as Guarantor.* The Railroad, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of that portion of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the third paragraph of Article 3 hereof and interest thereon, and the due and punctual performance of all obligations of the Company under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Company under this Agreement (except for the sums payable by the Company pursuant to subparagraph (a) of the third paragraph of Article 3 hereof), will be promptly paid when due, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Company in any such obligations or payments the Railroad agrees punctually to perform or pay the same, irrespective of any enforcement against the Company of any of the rights of the Vendor hereunder.

The Railroad agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity or enforceability of this Agreement or any other circumstances which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of the last paragraph of Article 3 hereof or any other circumstances which might otherwise limit the recourse of the Vendor to the Company. The Railroad hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Railroad hereunder.

In the event that the Railroad shall make any payments to the Vendor on account of its guaranty hereunder, the Railroad agrees that it shall not acquire any rights, by subrogation or otherwise, against the Company or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Railroad; *provided, however*, that after the payment by the Railroad to the Vendor of all sums payable under this Agreement, the Railroad shall by subrogation, be entitled to the rights of the Vendor against

the Company by reason of such payment, to the extent, but only to the extent, that the Company has received "income and proceeds from the Equipment" (as defined in Article 3 hereof) and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement and subject to the limitations contained in the last paragraph of said Article 3, of sums payable by the Company to the Vendor hereunder.

ARTICLE 8. *Reports and Inspections.* The Railroad's obligations set forth in §7 of the Lease are hereby incorporated by reference as if fully set forth herein and the Railroad agrees that such obligations shall be enforceable against the Railroad by the Vendor whether or not the Lease is in effect. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the continuance of this Agreement.

ARTICLE 9. *Marking of Equipment.* The Railroad's obligations set forth in §4 of the Lease are hereby incorporated by reference as if fully set forth herein and the Railroad agrees that such obligations shall be enforceable against the Railroad by the Vendor whether or not the Lease is in effect.

ARTICLE 10. *Compliance with Laws and Rules.* The Railroad's obligations set forth in the second paragraph of §8 of the Lease are hereby incorporated by reference as if fully set forth herein and the Railroad agrees that such obligations shall be enforceable against the Railroad by the Vendor whether or not the Lease is in effect.

ARTICLE 11. *Possession and Use.* The Company, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment to the Vendor, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Company may lease the Equipment to the Railroad as permitted by, and for use as provided in, the Lease, but the rights of the Railroad and its permitted assigns (the Railroad hereby so acknowledging) under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; *provided, however,* that so long as the Railroad shall not be in default under the Lease

or under this Agreement in its capacity as guarantor or otherwise, the Railroad shall be entitled to the possession and use of the Equipment. The Company hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under and as defined in the Lease until the Vendor shall have received notice in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Railroad or served by the Railroad upon it in connection therewith. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

The Company may also lease the Equipment to any other railroad company with the prior written consent of the Vendor which consent shall not be unreasonably withheld; *provided, however*, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) a copy of such lease shall be furnished to the Vendor.

ARTICLE 12. *Prohibition Against Liens.* The Company has not and will not take any action which would create a lien, charge, security interest or other encumbrance upon or with respect to the Equipment, or any part thereof, or the interest of the Vendor therein, equal or superior to the Vendor's title thereto or property therein. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement. The Vendor shall not subject the Hulks or the Equipment to any lien, charge, security interest or other encumbrances not contemplated by this Agreement.

ARTICLE 13. *Indemnities and Warranties.*

The Vendor and the Company make no warranties whether written, oral, statutory or implied (including the warranties of merchantability or fitness for a particular purpose), with respect to the Hulks or the Equipment or in connection with this Agreement or the delivery and sale of the Equipment hereunder.

The Railroad warrants to the Vendor and the Company that the Hulks will be reconstructed in accordance with the Specifications and standards set forth or referred to in Article 1 hereof and warrants that the Equipment will be free from defects in material or workmanship or design under normal use and service. **This warranty is expressly in lieu of all other warranties, with respect to reconstruction, expressed or implied, including any implied warranty of merchantability (or fitness for a particular purpose).** The Railroad agrees to and does hereby, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Vendor and, subject to the rights of the Vendor under this Agreement, to the Company, every claim, right and cause of action which the Railroad has or hereafter shall have against any party who shall perform any of the reconstruction of the Hulks which the Railroad has agreed to perform hereunder and the Railroad further agrees to execute and deliver to the Vendor and the Company all and every such further assurance as may be reasonably requested by the Vendor or the Company more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action.

The warranties and indemnities of the Railroad contained in this Article 13 and in any other Articles hereof and all other covenants and obligations of the Railroad contained in this Agreement shall inure to the benefit of, and be enforceable by, any lessee, assignee or transferee of this Agreement or of any units of the Equipment reconstructed by the Railroad hereunder.

The Railroad further agrees with the Vendor and the Company that neither the inspection as provided in Article 2 hereof, nor any examination, nor the acceptance of any units of the Equipment by the Company under Article 2 hereof shall be deemed a waiver by the Vendor or the Company of any of their rights under this Article 13.

The Railroad agrees to indemnify, protect and hold harmless the Vendor and the Company from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Company because of the use or operation of the Equipment or reconstruction of the Hulks or any unit thereof, or because of any design, article or material infringing or claimed to infringe on any patent or other right.

The Railroad agrees to indemnify and save harmless the Vendor and the Company against any charge or claim made against either of them and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Vendor or the Company may incur in any manner by reason of entering into or performing the Hulk Purchase Agreement, this Agreement, any of the instruments or agreements referred to therein or herein or contemplated thereby or hereby or the ownership of by the Company or the retention by the Vendor of security title to the Equipment, or which may arise in any manner out of or as the result of the ordering, acquisition, purchase, reconstruction, use, operation, condition, delivery, rejection, storage or return of, any of the Hulks or any units of the Equipment and to indemnify and save harmless the Vendor and the Company against any charge, claim, expense, loss or liability on account of any accident in connection with the reconstruction, operation, use, condition, possession or storage of any of the Hulks or any units of the Equipment resulting in damage to property or injury or death to any person. The indemnities contained in this Article shall survive delivery of the Equipment and the performance of all other obligations under this Agreement and the Hulk Purchase Agreement and the termination of this Agreement and/or the Hulk Purchase Agreement or the Lease.

ARTICLE 14. *Assignments.* The Company will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including without limitation, rights and remedies against the Company and the Railroad) and (ii) provides that the Company shall remain liable for all the obligations of the Company under this Agreement.

All but not less than all of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Company and the benefits arising from the undertakings of the Railroad hereunder, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Railroad from, any of the obligations of the Railroad to construct and deliver the Equipment in

accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13 hereof.

Prior to such assignment, the assignor shall give written notice to the Company and the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company and the Railroad, respectively, of the notification of any such assignment, all payments thereafter to be made by the Company or the Railroad under this Agreement shall be made to the assignee in such manner as it may direct.

In the event of any such assignment or successive assignments by the Vendor of its security title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Railroad will, whenever requested by the assignee, change the markings on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment, such markings to be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of an assignment of its security title to all the Equipment at the time covered by this Agreement shall be borne by the Railroad.

ARTICLE 15. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing (without regard to the limitations provided for in the last paragraph of Article 3 hereof or in Article 22 hereof) to wit:

(a) The Company shall fail to pay in full any sum payable by the Company when payment thereof shall be due hereunder and such default shall continue for 15 days after notice thereof to the Company by the Vendor; or

(b) The Company or the Railroad (or the Company acting on behalf of the Railroad in the event of a default by the Railroad under this subparagraph (b) or the Railroad acting on behalf of the Company in the event of a default by the Company under this subparagraph (b)

which action the Railroad and the Company hereby respectively agree to) shall, for more than 30 days after the Vendor shall have demanded in writing to the Company and the Railroad performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement as specified herein or incorporated herein by reference, of the Lease or of any other agreement entered into relating to the financing of the Equipment, on their part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; *provided, however*, that failure of the Railroad to perform or comply with any covenant, agreement, term or provision of this Agreement relating to the Railroad solely in the capacity as rebuilder of the Equipment shall not be deemed a default by the Railroad for purposes of this provision; or

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings (whether or not subject to ratification) in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) Any other proceeding shall be commenced by or against the Company or the Railroad for any relief which includes, or might result in, any modification of the obligations of the Railroad or the Company hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Company or the Railroad under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such

ineffectiveness shall continue), all the obligations of the Company or the Railroad, as the case may be, under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or the Railroad, as the case may be, or for their respective property in connection with any such proceedings (whether or not subject to ratification) in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) The Company shall make or suffer any unauthorized assignment or transfer of its rights, interests or obligations under this Agreement or any interest herein or make any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Company and the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Railroad set forth in Article 11 hereof, cause the Lease immediately upon such notice to terminate (and the Company and the Railroad each acknowledge the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 3 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment from the Company, subject to the limitations of Article 3 hereof, or the Railroad wherever situated. The Company or the Railroad, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which

constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Company and the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Company and the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Railroad set forth in Article 11 hereof, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Company or the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Company, the Railroad or any other person and for such purpose may enter upon the premises of the Railroad or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall (subject to the rights of the Railroad set forth in Article 11 hereof), at its own expense forthwith and in the usual manner, (including, but not by way of limitations, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such

point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Company and/or the Railroad requiring specific performance hereof. The Company and the Railroad hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may sell, lease or otherwise dispose of the Equipment or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. Written notice of the Vendor's election to take possession of the Equipment shall be given to the Company and the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. If the Vendor shall have given no notice of intention to dispose of the Equipment in any manner other than sale, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Company, the Railroad and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Railroad set forth in Article 11 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the

Company, the Railroad or any other party claiming from, through or under the Company or the Railroad at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if, prior to such sale and prior to the making of a contract for such sale, the Company should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Company and the Railroad shall be given written notice of such sale and of the proposed time of making any contract for such sale (which notices may be given simultaneously and the time for which may run concurrently) not less than 30 days prior thereto, by telegram or registered mail addressed as provided in Article 21 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Company and the Railroad to purchase or provide a purchaser, within thirty days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Company or the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Company or the Railroad shall not otherwise alter or affect the Vendor's rights or the Company's or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's or the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Company shall, subject to the limitations of Article 3 hereof, pay the amount of such deficiency to the Vendor upon demand, and, if the Company shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Company, subject to the limitations of Article 3 hereof. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Company or the Railroad, as the case may be, to the extent of their respective interests therein.

The Company will, subject to the limitations of Article 3 hereof, pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement and shall be entitled to reimbursement by the Railroad for any such expenses so paid. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendor, the Company and the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Company and the Railroad, to the full extent permitted by law hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. *Recording.* The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (notice of such deposit to be forthwith thereafter given in *The Canada Gazette*) pursuant to Section 86 of the Railway Act of Canada and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. *Payment of Expenses.* The Company will pay, in connection with this transaction, the reasonable expenses of special counsel to the Vendor, the cost of printing, and the fees of American National Bank

and Trust Company of Chicago, up to an aggregate of \$20,000 and any such additional costs or expenses shall be paid by the Railroad. In the event that these fees, costs and expenses, as stated herein, are less than \$20,000, the Company will, by check, refund the difference to the Railroad. The Company will pay the fees and expenses of its counsel. The costs and expenses incident to applying for a ruling from the Internal Revenue Service to the effect set forth in §14 of the Lease shall be paid by the Company. The Railroad will also pay the reasonable costs and expenses involved in the recording of this Agreement, the Lease (and any assignment thereof) and the Transfer Agreement.

ARTICLE 20. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Company and the Railroad.

ARTICLE 21. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it as its chief place of business at the following specified addresses:

(a) to the Vendor at 33 North LaSalle Street, Chicago, Illinois 60690, Attention Corporate Trust Department;

(b) to the Company, at 100 South Wacker Drive, Chicago, Illinois 60606, Attention: Ramiro Collazo, Vice President;

(c) to the Railroad, at 176 East Fifth Street, St. Paul, Minnesota 55101, Attention of Assistant Vice President, Financial Planning Division;

(d) to any assignee of the Vendor, or of the Company, at such address as may have been furnished in writing to the Company, or the Vendor, as the case may be, and to the Railroad, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. *Immunities; Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Agreement, or

referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Vendor, the Company or the Railroad, solely by reason of the fact that such person is an incorporator, stockholder, director, or officer, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The Railroad's failure to perform its obligations set forth in the first paragraph of Article 6 and under Articles 5, 8, 9, 10 and 18 hereof shall constitute the basis for an event of default hereunder to the extent provided in Article 15 hereof. No waiver or amendment of the Railroad's undertakings under the Lease as incorporated in said Articles shall be effective unless joined in by the Vendor.

ARTICLE 23. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of June 15, 1974, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.



IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
as Agent

[CORPORATE SEAL]

by *[Signature]*
Second Vice President

Attest:

[Signature]
ASSISTANT Secretary

AMERICAN FLETCHER LEASING CORPORATION,

by *[Signature]*
Vice President

[CORPORATE SEAL]

Attest:

[Signature]
ASSISTANT Secretary

BURLINGTON NORTHERN INC.,

by *[Signature]*
Vice President

[CORPORATE SEAL]

Attest:

[Signature]
Asst. Secretary



STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this ^{25th} day of June, 1974, before me personally appeared Richard Y. G... to me personally known, who, being by me duly sworn, says that he is a Vice President of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said trust company, that said instrument was signed and sealed on behalf of said trust company by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said trust company.

[Signature]
Notary Public

My Commission Expires ~~My~~ Commission Expires on January 28, 1975

[NOTARIAL SEAL]

STATE OF MINNESOTA }
COUNTY OF RAMSEY } ss.:

On this ²⁵ day of ~~June~~ June, 1974, before me personally appeared W.K. Bush, to me personally known, who, being by me duly sworn, says that he is a Vice President of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Signature]
Notary Public

[NOTARIAL SEAL]

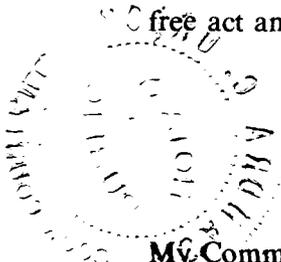
My Commission Expires

G. F. STEINHIBEL
Notary Public, Ramsey County, Minn.
My Commission Expires Mar. 16, 1979

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

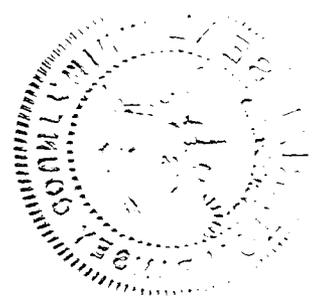
On this 25th day of June, 1974, before me personally appeared RAMIRO Collazo, to me personally known, who, being by me duly sworn, says that he is a Vice President of AMERICAN FLETCHER LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joyce M. Moore
Notary Public



My Commission Expires 6-31-77

[NOTARIAL SEAL]



SCHEDULE A

Quantity	Description of Equipment	Railroad's Road Numbers (both inclusive)	Hulk Purchase Price		Base Reconstruction Cost		Purchase Price		Place of Delivery
			Per Unit	Total	Per Unit	Total	Per Unit	Total	
300	40' Narrow Door Box Cars	BN 161900-162199	\$2,318	\$ 695,400	\$8,416	\$2,524,800	\$10,734	\$3,220,200	Havelock, Nebraska
60	40' Wide Door Box Cars	BN 199140-199199	6,628	397,680	7,730	463,800	14,358	861,480	St. Cloud, Minnesota
100	50' Wide Door Box Cars	BN 247200-247299	5,388	538,800	7,425	742,500	12,813	1,281,300	St. Cloud, Minnesota
460				\$1,631,880		\$3,731,100		\$5,362,980	

SCHEDULE A—(Continued)**Specifications**

<u>Quantity</u>	<u>Description of Equipment</u>	<u>Specifications and AAR Mechanical Designation</u>
300	40' Narrow Door Box Cars	CRP-1, Commencing July 24, 1974; XM Box
60	40' Wide Door Box Cars	CRP-3, Commencing, May 1, 1974; XM Box
100	50' Wide Door Box Cars	CRP-4, Commencing Octo- ber 8, 1974; XM Box